IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

WP(C).No. 28393 of 2005(E)

PETITIONERS:

1. PREMALATHA,
   VISHNU VIHAR, ELOOR NORTH, ELLOOR VILLAGE,
   ERNAKULAM DIST. (PERSONNEL ASSISTANT, FACT,
   HEAD OFFICE, UDYOGAMANGAL).

2. L. ARUNA BEN,
   BEN'S SQUARE, S.N.PURAM ROAD, THAIKKATTUKARA,
   ALUVA. (RESEARCH OFFICER, FACT, HEAD OFFICE,
   UDYOGAMANDAL).

BY ADV. SRI.K.S.MOHAMED HASHIM
SRI.V.M.SAJAN

RESPONDENTS:

1. THE JOINT REGISTRAR OF CO-OPERATIVE
   SOCIETIES, ERNAKULAM.

2. THE SECRETARY,
   FEDO EMPLOYEES' CO-OPERATIVE SOCIETY LTD.NO.679,
   UDYOGAMANDAL, ERNAKULAM DIST.

3. THE CHIEF MANAGER,
   FINANCE (PAY ROLL), FACT LTD., HEAD OFFICE,
   UDYOGAMANDAL.

4. T.L. VARGHESE,
   THONDATHIL HOUSE, MANJUMMEL P.O.,
   UDYOGAMANDAL, ERNAKULAM DIST.

R1 BY ADV. SMT.ANU SIVARAMAN, GOVT. PLEADER
R3 BY ADV. SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
R4 BY ADV.SRI.K.K.BABU
R2 BY ADV.SRI.PAULY MATHEW MURICKEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN, J.

W.P(C).No.28393 OF 2005

Dated this the 13th day of November, 2007

JUDGMENT

Fourth respondent, the principal debtor in a loan transaction, obtained Ext.P4 judgment from this Court, deferring distress action for a period of nine months from 15.7.2005, on condition of payment of Rs.10,000/- each per month, in terms of that judgment. On default, action proceeded also against the guarantors, who have filed this writ petition asserting that while huge amounts have already been recovered from them, the employer of the 4th respondent, viz., FACT, has released DCRG and other retiral benefits to the 4th respondent, a portion of which sizable amount could have wiped off the entire debts. It is urged by the petitioners that FACT has released the amounts without getting the clearance of the second respondent, a co-operative society of FACT employee.

2. On 6.10.2005, an interim order was issued restraining the 4th respondent from transferring any of his immovable assets and

also withdrawing any amount in excess of Rs.5,000/- from his bank account. That order was made absolute by order dated 1.12.2006. As of now, it is submitted that the third respondent is making different remittances. However, learned counsel for the creditor society points out that the present outstandings is around Rs.65,000/- and even if any leniency is to be shown, the 4th respondent may be directed to wipe off it in six months.

In the aforesaid circumstances, this writ petition is disposed of directing that all distress action against the petitioners will stand deferred for the time being and the 4th respondent shall pay the entire debts due to the second respondent under the transaction in question in six equal monthly instalments, payable on or before the 15th of every month commencing from December, 2007. If there is default to remit any of the instalments in terms of this judgment, the benefit of this judgment in so far as it is in favour of the 4th respondent, will stand recalled and the society will be entitled to proceed against the immovable properties and movables of the

4th respondent, including any amounts that may lie in the bank account. To ensure that, the 4th respondent will continue to be restrained from transferring any of his immovable assets and also from withdrawing any amount in excess or Rs.5,000/- from his bank account, until discharging the entire debts due to the second respondent society. The petitioners will be proceeded against only if all efforts to reach out at the assets and person of the 4th respondent turns futile in enforcing recovery.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.